Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
50277-1957	

Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.6(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST.	**Application Number** 10/086,782 / **Filed** 2/28/2002
on _____	**First Named Inventor** Carol L. Colrain et al.
Signature _____	
Typed or printed name _____	**Art Unit** 2168 / **Examiner** Le, D.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.
X

The review is requested for the reason(s) stated on the attached sheet(s).
       Note: No more than five (5) pages may be provided.
X

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
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12/5/2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1_____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Carol L. Colrain, et al.   Confirmation No.: 8991

Serial No.: 10/086,782   Examiner: Le, D.

Filing Date: February 28, 2002   Group Art Unit: 2168

Title: SYSTEM AND METHOD FOR PROVIDING COOPERATIVE RESOURCE
       GROUPS FOR HIGH AVAILABILITY APPLICATIONS

Via EFS-Web
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

<u>PRE-APPEAL BRIEF REQUEST FOR REVIEW</u>

Sir:

The Examiner made clear factual errors with respect to the rejection of Claims 45-60

under 35 U.S.C. § 103(a). Multiple features of Claim 45 are absent in the cited references:

U.S. Patent No. 6,185,601 issued to Wolff et al. ("*Wolff*") and U.S. Patent No. 6,430,689

issued to Khalil et al. ("*Khalil*").

The factual errors stem from the fact that the Examiner has dissected each element of

Claim 45 and cited different portions of two references as teaching the dissected elements. In

doing so, the Examiner has taken many of the dissected elements out of context. Indeed, it is

possible that any claim may be found to be unpatentable by dissecting a claim into short

phrases, as the Examiner has done here, and equating each phrase to a different portion of

multiple references (or even the same reference).

Claim 45 recites:

> A machine-implemented method, comprising the steps of:
> a service requestor using an Internet Protocol (IP) address to address requests
>   to a service provided by a first node within a cluster, wherein said first

> node is configured to provide said service to requests addressed to said IP address;
>
> **in response to said first node becoming unavailable, automatically configuring a second node of the cluster to respond to requests addressed to said IP address;**
>
> after said first node becomes unavailable, the service requestor using said IP address to address a message to said cluster related to said service; and
>
> **in response to said message, said second node of the cluster sending a response that indicates an error condition.** (emphasis added)

Fundamentally, the cited references, *Wolff* and *Khalil*, either individually or in combination, fail to teach or suggest at least the above-bolded features of Claim 1.

> *1.* Wolff *fails to teach or suggest "in response to said first node becoming unavailable, automatically configuring a second node of the cluster to respond to requests addressed to said IP address"*

The Office Action cites col. 2, line 66 – col. 3 line 2 of *Wolff* for disclosing "in response to said first node becoming unavailable, automatically configuring a second node of the cluster to respond to requests" of Claim 45. This is incorrect. This portion of *Wolff* states:

> In another embodiment of the invention, the method comprises the acts of: (1) sending an I/O request from at least one client to the first server node for at least one resource; (2) determining, an I/O failure of the first server node; and (3) redirecting subsequent requests from at least one client for at least one resource to another among the plurality of server nodes, in response to the determining act.

However, *Wolff* does not even suggest that a <u>second server node</u> is **configured** to respond to requests addressed to the IP address that was previously used by the first node. Instead, *Wolff* teaches that subsequent requests must be <u>redirected</u> to another server node.

In reference to FIG. 9B, col. 27, lines 11-24 of *Wolff* states:

> At time T=0, aware client 102A sends an I/O request 920 via node 3 for a file system 122B [on] memory resource 118B. **The absence of a response to that request, resulting from the failure of node 3, causes the aware client to obtain from its namespace an alternate node through which the file system may be accessed.** Node 4 appears in the configuration database as having a domain that overlaps with the domain of the file system. A server and

> a resource are said to be in the same domain space if the domain fields 440J-K (see FIG. 5B) for the resource record overlap with one of the domain members in fields 420G (see FIG. 5A) of the node/server record in the configuration database. Thus, **aware client 102A sends an I/O request 922 to node 4**. (emphasis added)

Claim 45 is directed towards an approach for providing a service to a service requestor in a manner such that the service requestor is quickly notified (i.e., does not have to wait for a time-out) when a node providing the service fails. However, *Wolff* suggests that a client waits to receive a time-out: the "<u>absence of a response to that request</u>, resulting from the failure of node 3, causes the aware client to obtain…an alternate node" (emphasis added). Furthermore, even if *Khalil* could be combined with *Wolff*, the combination still fails to even remotely suggest (either in cols. 2-3 or 27 of *Wolff*) the idea that a second node (e.g., node 4) <u>is configured to respond to requests that are addressed to an address</u> associated with a first node that became unavailable.

In the Response to Arguments section, the Final Office Action argued that col. 20, line 65 to col. 21, line 25 of *Wolff* discloses that a node/server can be "<u>automatically configured</u> to be a standby node/server which is eligible for performing the administrative [server functions] if the current administrative node becoming [*sic*] unavailable" (emphasis added; page 7). However, even assuming that a node/server may be configured to become an administrative node/server for a resource (e.g., a file system), such a "configured" node/server is **not** configured to **<u>respond to requests addressed to the same IP address</u>** that is used to address requests for a service provided by another node/server, as Claim 45 would require.

     2.   *The combination of* Wolff *and* Khalil *fails to teach or suggest that a second node in a cluster responds to requests that are addressed to a service that is provided by a first node of the cluster*

Even if the *Wolff* and *Khalil* could be combined to show each claim fragment of Claim 45 that the Final Office Action alleges is taught by either *Wolff* or *Khalil*, the combination still fails to teach or suggest that a <u>second node, in a cluster, responds to requests that are addressed to a service that is provided by a first node in the cluster</u>. Indeed, as the Final Office Action states, the Examiner has relied on *Khalil* for teaching "using an Internet Protocol (IP) address to address requests", "said IP address", and the recited message (page 8).

     3.   *The Examiner improperly dissected the claimed invention into discreet elements*

Reference is made to the arguments presented in the Office Action response mailed on June 12, 2007, beginning with the heading on page 14 and ending with the heading on page 16 (i.e., "B. CLAIM 53"). Those arguments are incorporated by reference, as suggested by point 4 of the Pre-Appeal Brief Conference guidelines that are outlined in the Official Gazette Notice on July 12, 2005, entitled "New Pre-Appeal Brief Conference Pilot Program."

Even in the Examiner's response to the above arguments in the Final Office Action, the Examiner has shown that she has improperly dissected the claim into discreet fragments that are evaluated in isolation to each other. The Examiner asserted in the Final Office Action (page 7) that "the examiner has been so carefully examined [*sic*] the claimed elements as a whole, therefore, **examiner has relied on Khalil to support the element 'IP address'**" (emphasis added). One of the core features of the invention of Claim 45 is that a service requestor uses an IP address to address requests to a service provided by a first node in a cluster, and that when the first node becomes unavailable, a message, that is addressed to that

service using the **same IP address**, is responded to by a **different node**. Thus, even though the IP address is used to address requests to a first node, a different node responds to such requests if the first node becomes unavailable.

Furthermore, the Examiner stated, immediately before the assertion cited above on page 7, that even though Applicants noted in the response mailed June 12, 2007 that "a second node of a cluster is configured to respond to requests that are addressed to said IP address" (Office Action, page 7), "the examiner has pointed out how each individual fragment correspond to a similar fragment in one of the two references" (*Id*). Thus, the Examiner has admitted to performing a fragment-by-fragment comparison between Claim 45 and the cited art until each fragment is shown to be disclosed in the cited art. Again, Claim 45 has not been considered as a whole, as required by MPEP § 2106, II, C.

As another example of improper claim dissection, the Final Office Action concedes that *Wolff* fails to teach "in response to said message, said second node of the cluster sending a response that indicates an error condition", as recited in Claim 45 (page 3). The Final Office Action then alleges that col. 8, line 66 to col. 9, line 14 of *Khalil* discloses this feature of Claim 45. This is incorrect. Just like *Wolff*, this cited portion of *Khalil* lacks any notion of a node, in a cluster, responding to messages that are addressed to a service that is provided by a **different** node in the cluster.

Because numerous features of Claim 45 are plainly absent from *Wolff* and *Khalil* and because the claim was improperly dissected into fragments that were evaluated in isolation, the rejection of Claim 45 under 35 U.S.C. § 103(a) is improper and constitutes clear error.

CONCLUSION

Applicants request that the rejections of all the pending claims be reversed.